THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25312 of 2005

Dated 29th November 2005

Between:

M.N.Rao

…Petitioner

and

The APSARTC rep by its Regional Manager,

Visakhapatnam and others

…Respondents

O R D E R:

The petitioner is employed as Driver in APSRTC. He was issued a Charge Sheet, dated 02.02.1990, on the allegation that he caused damage to the bus, while conducting the bus, and that he was required to submit the explanation, as to why necessary disciplinary action shall not be taken against him. The petitioner submitted his explanation to the same. On a consideration of the same, the respondent passed an order, dated 15.02.1994, imposing the penalty of withholding of annual increment, for a period of one year, with cumulative effect. Aggrieved thereby, the petitioner preferred an appeal before the appellate authority and that the same was rejected. Hence, this writ petition.

The only point urged by the learned counsel for the petitioner is that the respondent imposed the penalty of withholding of annual increment, for a period of one year, with cumulative effect, without conducting departmental enquiry. He placed reliance upon the judgment of the Apex Court in ***KULWANTH SINGH GILL v. STATE OF PUNJAB,*** and submits that withholding of increment is a major penalty, and it cannot be imposed, except by conducting departmental enquiry.

Learned Standing Counsel for the respondent, on the other hand, submits that the penalty imposed against the petitioner itself is minimal, if the lapse on his part is taken into account.

It is a matter of record that the respondent imposed the penalty of withholding of annual increment, for a period of one year, with cumulative effect, on the basis of the charges levelled against him. Though the charge sheet was issued to the petitioner, before the penalty was imposed, no departmental enquiry was conducted. In ***KULWANTH SINGH GILL's case*** (supra), the Supreme Court held that withholding of increments, with cumulative effect, is a major penalty, and it cannot be imposed, except by conducting departmental enquiry. In view of the same, the impugned order cannot be sustained.

In the ordinary course of things, the impugned order needs to be set aside, leaving it open to the respondent to pass fresh orders. To avoid further delay and complication in the mater, this Court is of the view that the impugned order can be treated, as the one for withholding of annual increment, without cumulative effect.

Hence, the writ petition is partly allowed, directing that the order, dated 15.02.1994, passed by the respondent, shall be treated as the one for withholding of annual increment, for a period of one year, without cumulative effect, and that the petitioner shall not be entitled for any monetary benefits, up to the date of this order. There shall be no order as to costs.

22nd November 2005

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